

Applicants : Michael W. Masters *et al.*
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Filed : May 24, 2001
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REMARKS

Claims 1-48 are pending in this application. By this Amendment, claims 1, 2, 8, 14-39, 42 and 48 are amended. Claims 1, 2, 8, 14, 36 and 39 are amended to recite features supported in the specification at, for example, page 8, line 4 – page 14, line 19 (corresponding to paragraphs [0034] – [0063] in U.S. Patent Application Publication 2003/0191829) and Figs. 1 and 2. Claims 15-35, 37, 38 and 48 are amended for clarity. No new matter is added by any of these amendments. Claims 3-7, 9-13, 40, 41, 43, 46 and 47, labeled as “Original” in the July 1, 2005 Amendment After Final Rejection, are relabeled as --Previously Presented-- herein to reflect their addition in the September 19, 2001 Preliminary Amendment. Reconsideration based on the following remarks is respectfully requested.

I. Filing Date Correction

The Office Action incorrectly indicates an assigned filing date of September 19, 2001. However, the application identified supra received an actual filing date of May 24, 2001, and claims priority to Provisional Application 60/207,821 filed May 25, 2000. The assigned date mistakenly corresponds instead to when the Response to Notice to File Missing Parts and Preliminary Amendment were filed. Applicants respectfully request the filing receipt be corrected to reflect the actual filing date.

II. Indefiniteness Rejection under 35 U.S.C. §112, ¶2

The Office Action rejects claims 1, 2, 8, 14 and 36 in paragraph 3 under 35 U.S.C. §112, second paragraph, as being indefinite. The Office Action further rejects claim 39 in paragraphs 4 and 5 under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 1, 2, 8, 14, 36 and 39 have been amended to obviate these rejections in view of the Examiner’s helpful comments. Withdrawal of the rejections under 35 U.S.C. §112, second paragraph is respectfully requested.

III. Anticipatory Rejection under 35 U.S.C. §102

The Office Action rejects claims 1-48 as being allegedly anticipated under 35 U.S.C. §102(a) over U.S. Patent 6,122,664 to Boukobza *et al.* (hereinafter “Boukobza”). This rejection is respectfully traversed.

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Applicants claim a domestic priority date of May 25, 2000 under 35 U.S.C. §119(e) based on Provisional Patent Application 60/207,821. See MPEP §706.02(v)(D). Applicants respectfully assert that the basis of rejection under §102(a) is improper, because Boukobza qualifies as a reference only under §102(e). Specifically, Applicants' provisional filing date antedates the September 19, 2000 issue date of Boukobza. See MPEP §706.02(b)(D – re: 102(b) rejection). Thus, a subsequent Office Action that applies Boukobza as anticipating any of the rejected claims should also be non-final. Moreover, although Boukobza claims a priority date of June 27, 1996 for French Patent Application 96-08019, such foreign priority may not be properly applied for a reference.

Applicants' claims are directed generally, for example, to a processor in a distributed environment comprised of hosts, each host instantiating a copy of an application. For example, Applicants' independent claim 1 recites, *inter alia*, "an instrumentation collector that receives an instrumentation command from the host that executes the application; a quality of service manager that monitors the instrumentation command to determine application quality; a history server that receives an operating system command from the host; a host load analyzer that analyzes a load responsive to the history server to determine an operating load; a resource manager that receives the application quality and the operating load to determine a resource allocation for the host; and a program control that receives the resource allocation and a program signal from the distributed environment to control the host", and similarly recited in claim 2. Further, claims 8, 14, 36 and 39 recite analogous features. Applicants respectfully submit that Boukobza does not describe or suggest at least these claimed features.

Instead, Boukobza discloses a processing manager for object types in a plurality of nodes. In particular, Boukobza teaches a management node MN to monitor n nodes N1 ..., NN using a graphical user interface (GUI). See, *e.g.*, col. 4, lines 36-42 and Fig. 1 of Boukobza. Further, Boukobza teaches the GUI displaying the configuration of the nodes for management analysis. See, *e.g.*, col. 4, lines 50-62 of Boukobza. In addition, Boukobza teaches updating a list of nodes by an autonomous agent. See, *e.g.*, col. 5, lines 7-11 of Boukobza.

Consequently, Boukobza does not describe or suggest Applicants' claimed features of providing resource allocation based on the application quality and the operating load. These arguments also apply to similarly recited features in claims 3-7 based on their dependence from

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claim 2, claims 9-13 based on their dependence from claim 8, claims 15-35 based on their dependence from claim 14; claims 37 and 38 based on their dependence from claim 36, and claims 40-48 based on their dependence from claim 39.

For at least these reasons, Applicants respectfully assert that the independent claims are patentable over the applied reference. The dependent claims are likewise patentable over the applied reference for at least the reasons discussed, as well as for the additional features they recite. Consequently, all the claims are in condition for allowance. Thus, Applicants respectfully request that the rejection under 35 U.S.C. §102 be withdrawn.

IV. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully submit that this application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further is desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,



Gerhard W. Thielman
Registration No. 43,186

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DEPARTMENT OF THE NAVY
Naval Surface Warfare Center – Dahlgren Division
Office of Counsel – Code XDC1
17320 Dahlgren Road
Dahlgren, Virginia 22448-5100
Telephone: (540) 653-8061 Customer No. 23501

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